

1 Tony W. Wong, Esq. (CSB No. 243324)  
2 A. Justin Lum, Esq. (CSB No. 164882)  
3 **DAVID & RAYMOND I.P. LAW FIRM**  
4 388 E. Valley Blvd., Suite 223  
5 Alhambra, CA 91801  
6 Telephone: (626) 447-7788  
7 Facsimile: (626) 447-7783

8 Attorneys for Plaintiff  
9 DIKAI INDUSTRIAL (SHENZHEN) CO., LTD.

10 IN THE UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 Dikai Industrial (Shenzhen) Co., Ltd., a  
13 China Company,

14 Plaintiff,

15 v.

16 Michel D'Or Limited of Hong Kong, a  
17 China business of form unknown, and  
18 DOES 1 through 10, inclusive,

19 Defendants.

CASE NO. 2:15-CV-4111

**COMPLAINT FOR:**

- 20 (1) **DECLARATORY JUDGMENT**  
21 **OF INVALIDITY OF**  
22 **REGISTERED PATENT**  
23 (2) **DECLARATORY JUDGMENT**  
24 **OF NON-INFRINGEMENT OF**  
25 **REGISTERED PATENT**  
26 (3) **VIOLATION OF CAL. BUS. &**  
27 **PROF. CODE § 17200**

28 Plaintiff DIKAI INDUSTRIAL (SHENZHEN) CO., LTD., through its  
counsel, for its Complaint against Defendants MICHEL D'OR LIMITED OF  
HONG KONG and DOES 1 THROUGH 10, INCLUSIVE, states as follows:

## **THE PARTIES**

1  
2 1. Plaintiff DIKAI INDUSTRIAL (SHENZHEN) CO., LTD.

3 (“Plaintiff”) is a China company engaging in the manufacture and sale of diamond  
4 and gemological tools and equipment with a principal place of business at Lan  
5 Tian Technical Industrial Park, Heng Gang Xia Industrial Park, Xing Qiao,  
6 Shajing Town, Baoan District, Shenzhen City, Guangdong Province, China.  
7  
8

9 2. Plaintiff is informed and believes that Defendant MICHEL D'OR  
10 LIMITED OF HONG KONG (“Defendant”, "MDL") is a China business of form  
11 unknown with a principal place of business at Unit 2007, Metro Centre II, 21 Lam  
12 Hing Street, Kowloon Bay, Kowloon, Hong Kong, China.  
13  
14

15 3. The true names and capacities of Defendants Does 1 through 10,  
16 inclusive, whether individual, corporate, associate or otherwise, and the respective  
17 obligations of those defendants to Plaintiff, are unknown to Plaintiff at this time,  
18 who therefore sues said defendants by such fictitious names and will ask leave of  
19 the Court to amend this Complaint to show their true names and capacities when  
20 the same are ascertained. MDL and the Doe defendants are collectively referred  
21 to as “Defendants.”  
22  
23

24 4. Plaintiff is informed and believes and thereon alleges that each of the  
25 fictitiously named defendants are legally or equitably responsible in some manner  
26  
27  
28

1 for the occurrences as herein alleged, and that Plaintiff's damages as herein  
2 alleged were caused by Defendants' conduct.

3 5. Plaintiff is informed and believes and thereon alleges that at all times  
4 pertinent hereto, each of the Defendants were the agents, servants, and employees  
5 of each other, and were acting within the course and scope of their agency and  
6 employment.  
7  
8

### 9 **JURISDICTION AND VENUE**

10 6. Plaintiff's first and second claims for relief herein arise under the  
11 patent laws of the United States, including 35 U.S.C. §101 *et seq.*, the Declaratory  
12 Judgment Act, and 28 U.S.C. §§ 2201 and 2202.  
13  
14

15 7. This Court has subject matter jurisdiction over Plaintiff's claims  
16 pursuant to 28 USC § 1331 and 28 U.S.C. § 1338 (a) and (b).  
17

18 8. Venue is proper in this Court pursuant to 28 U.S.C. §1400 and 28  
19 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to  
20 the claims asserted herein occurred in this district, and because Plaintiff and, on  
21 information and belief, Defendant, conduct business in this district.  
22  
23

### 24 **RELEVANT BACKGROUND**

25 9. Plaintiff brings this action to stop Defendant from engaging in unfair  
26 competition concerning enforcement of a design patent issued by the U.S. Patent  
27  
28

1 and Trademark Office, US. Patent No. D570,114 for "Self Locking Gem Display  
2 Box," related to the design of a gem box ("Subject Patent") that it knew to be, or  
3 should reasonably have known to be invalid. Defendant has aggressively pursued  
4 enforcement of the Subject Patent in spite of the fact that it is widely known to  
5 have been anticipated by a substantial body of invalidating prior patents and  
6 publications.  
7  
8

9 10. A true and correct copy of the Subject Patent in question is attached  
10 herein as Exhibit "A."  
11

12 11. It is Plaintiff's understanding and belief that Defendant either had in  
13 its possession or could have easily learned of prior patents that invalidate the  
14 patent.  
15

16 12. Plaintiff additionally brings this action to stop Defendant from  
17 engaging in unfair competition concerning enforcement of the alleged copyright  
18 of a gem box ("Subject Copyright") for which copyright registration is non-  
19 existent or invalid. Plaintiff has aggressively pursued enforcement of the Subject  
20 Copyright, in spite of the fact that the registration for the Subject Copyright is  
21 invalid and/or the registration has not yet been issued.  
22  
23

24 13. Defendant has repeatedly threatened to file one or more legal actions  
25 to enforce the Subject Patent and Subject Copyright. A true and copy of some  
26 legal letters and emails are attached herein as Exhibit "B." Defendant has thereby  
27  
28

1 engaged in unlawful and unfair business practices as defined in the California  
2 Unfair Trade Practices Act, Sections 17200 *et seq.*

3 14. It is Plaintiff's understanding and belief that Defendant's contact  
4 with Plaintiff's business partners in the United States and threats of legal action  
5 for enforcement of the Subject Patent and Subject Copyright amount to ill founded  
6 attempts to interfere with the business of parties who are making, using and  
7 selling legitimate products that have been wrongly accused.  
8

9 15. Plaintiff has been damaged because Plaintiff is the supplier of certain  
10 gem boxes that have been accused of infringement of Defendant's Subject Patent  
11 and Subject Copyright. Defendant's illegal actions amount to interference with  
12 Plaintiff's legitimate business relationships.  
13

14 16. Based on Plaintiff's information and belief, Defendant had  
15 knowledge of and was fully informed of prior patents and publications that would  
16 invalidate the Subject Patent prior to threatening legal action to enforce said  
17 patent, and thereby has engaged in unfair competition and unfair business  
18 practices.  
19

20 17. Defendant's attempts to enforce the Subject Patent, while knowing  
21 that it is not legally enforceable, has and continues to cause damage to Plaintiff's  
22 business relationships and interference with Plaintiff's ability to sell the products  
23 that have been accused by Defendant.  
24  
25  
26  
27  
28

**FIRST CLAIM FOR RELIEF**

(Declaratory Judgment of Invalidity of the Subject Patent)

18. Plaintiff repeats each and every allegation contained in paragraphs 1-17 and incorporates such allegations by reference herein.

19. Plaintiff contends that one or more of claims of the Subject Patent is invalid for failing to comply with the conditions and requirements set forth in the United States Patent Laws, Title 35 U.S.C. §101, *et seq.*, including without limitation §§ 102, 103, and/or 112, and including (*inter alia*) invalidity under 35 U.S.C. §§102, 103, and/or 112.

20. Plaintiff is entitled to entry of judgment pursuant to 28 U.S.C. §§2201 and 2202 from this Court declaring one or more claims of the Subject Patent invalid.

**SECOND CLAIM FOR RELIEF**

(Declaratory Judgment of Non-infringement of the Subject Patent)

21. Plaintiff incorporates paragraphs 1 through 17, inclusive, as though the same were set forth in full herein.

22. Defendant has stated a specific intent to file suit against Plaintiff and demands Plaintiff comply with demands beyond Defendant's claims of rights.

23. There presently exists a justiciable controversy regarding the rights of the parties.

1           24. On information and belief, Defendant intends to file suit against  
2 Plaintiff and absent a declaration of non-infringement Plaintiff will suffer and  
3 continues to suffer injury.  
4

5           25. Plaintiff is not liable for infringing any valid rights Defendant may  
6 claim in the Subject Patent and Defendant has no rights against Plaintiff in the  
7 Subject Patent because of its invalidity.  
8

9           26. Plaintiff seeks a declaratory judgment that they have not and do not  
10 infringe any enforceable rights in the Subject Patent and that they are not  
11 otherwise liable to Defendant.  
12  
13

14  
15                           **THIRD CLAIM FOR RELIEF**

16                                   **Unfair Competition**

17  
18                   Under California Business and Professions Code § 17200 *et seq.*

19                                   (also known as Unfair Practices Act)

20           27. Plaintiff repeats each and every allegation contained in the foregoing  
21 paragraphs, 1 through 26, inclusive, and incorporates such allegations by  
22 reference herein.  
23

24           28. Defendant has committed acts of unfair competition by the knowing  
25 enforcement of a patent that is anticipated and unenforceable because of the actual  
26  
27  
28

1 and/or constructive knowledge of prior patents and publications that show it to be  
2 invalid.

3 29. Defendant has committed acts of unfair competition by the knowing  
4 enforcement of a copyright for which copyright registration is invalid or not  
5 existing.  
6

7 30. Defendant's attempts to enforce the Subject Patent and Subject  
8 Copyright constitute unfair business acts, including unfair competition and  
9 intentional tortious interference with business relationships under the common law  
10 and violate California's Unfair Competition Law, Cal. Bus. & Profs. Code §  
11 17200 (also known as the Unfair Practices Act).  
12

13 31. Plaintiff has no adequate remedy at law for the damages that are  
14 continuing to its business as a result of Defendant's actions that are in violation of  
15 the Unfair Practices Act.  
16

17 32. Defendant's acts as alleged herein were malicious, willful, wanton,  
18 oppressive and outrageous.  
19

20 33. Defendant's unfair competition has damaged Plaintiff and caused it  
21 irreparable harm, which will continue unless Defendant's unlawful conduct is  
22 enjoined by this Court.  
23  
24  
25  
26  
27  
28



1           34.    Upon information and belief, Defendant's acts were in conscious and  
2 willful disregard for Plaintiff's rights and the resulting damage to Plaintiff is such  
3 as to warrant the enhancement of damages in order to provide just compensation.  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

//

**PRAYER**

WHEREFORE, Plaintiff prays judgment against Defendant as follows:

1. For preliminary and permanent injunction against Defendant's unlawful conduct of attempting to enforce the Subject Patent;
2. For entry of a judgment declaring that Plaintiff is not liable for any infringement of the Subject Patent;
3. For entry of a judgment declaring the Subject Patent invalid;
4. For compensatory damages that are to be proven at trial, and at present are not fully determined;
5. For restitution as authorized by law;
6. For prejudgment interest on Plaintiff's damages;
7. For attorneys fees, costs, and expenses incurred in bringing this action;
8. For other and further relief as this Court may deem proper.

Dated: June 1, 2015

David & Raymond IP Law Firm

s/Tony W. Wong/  
Tony W. Wong  
A. Justin Lum  
Attorneys for Plaintiff  
Dikai Industrial (Shenzhen) Co., Ltd.

**DEMAND FOR JURY TRIAL**

Plaintiff Dikai Industrial (Shenzhen) Co., Ltd. hereby demands a jury trial on all issues triable as of right to a jury. FED. R. CIV. P. 38(b).

Dated: June 1, 2015

David & Raymond IP Law Firm

s/Tony W. Wong/  
Tony W. Wong  
A. Justin Lum  
Attorneys for Plaintiff  
Dikai Industrial (Shenzhen) Co., Ltd.